UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

Mason Alexander Bullhead,

Defendant.

Case No. 24-cr-302 (PJS/LIB)

REPORT AND RECOMMENDATION

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of Title 28 U.S.C. § 636 and Local Rule 72.1; and upon Defendant Mason Alexander Bullhead's Motion to Suppress Statements. [Docket No. 35].

On May 29, 2025, the Court held an evidentiary hearing on Defendant's Motion to Suppress Statements. (See Minute Entry [Docket No. 48]). After supplemental briefing as requested by the parties, the Court took Defendant's Motion under advisement on August 4, 2025.

For the reasons discussed herein, it is recommended that Defendant's Motion to Suppress Statements, [Docket No. 35], be **DENIED**.

I. Defendant's Motion to Suppress Statements. [Docket No. 35].

Defendant seeks an Order from this Court suppressing two statements made by him on separate dates. (Def.'s Mot. [Docket No. 35]). The first is a statement made by defendant while being processed into detention at the Red Lake Nation Jail of May 13, 2024, and the second statement was made during a custodial interview with law enforcement on May 15, 2024, where he admitted to assaulting the three-year-old minor victim in this case. (Def.'s Memo. [Docket No.

55] at 1). At the May 29, 2025, Suppression Hearing, the Court, in addition to receiving five exhibits, heard testimony from FBI Special Agent Bradly Klag, as well as, the Defendant himself.

A. Background

It is alleged that on the night of May 4, 2024, Defendant assaulted his then girlfriend and her three-year-old son inside a residence on the Red Lake Indian Reservation. (Gov't's Response [Docket No. 42] at 1). In this altercation, it is further alleged that Defendant hit the child with his fists, and while the child was on the ground, kicked him with his steel-toed boots before attempting to strangle him. (Id.). Defendant then allegedly dragged the child across the floor by his hair with enough force to rip the child's hair from the roots and leave a bald spot on the child's scalp. (Id.; see also Transcript [Docket No. 50] at 15 (Testimony of Special Agent Klag stating the same)).[1] Defendant's then girlfriend attempted to intervene, but it is alleged that Defendant then attempted to strangle her and he threatened to kill the child if she called for help. (Gov't's Response [Docket No. 42] at 1; Tr. 16). Defendant eventually left the residence and his then girlfriend called the police. (Tr. 16; Gov't's Response [Docket No. 42] at 1). Upon arrival of law enforcement, Defendant was not found; however, the minor victim was subsequently taken to a hospital for a medical evaluation of his injuries. (Tr. 14–15). A Tribal Arrest Warrant was issued for Defendant. (Tr. 16–17; Def.'s Ex. 2).[2]

Defendant was not apprehended until May 13, 2024, after a tipster informed law enforcement that they had seen Defendant. (Tr. 18). Red Lake Criminal Investigator Ron Leyba was present during Defendant's arrest. (Tr. 60–61) SA Klag testified that upon arrest, while

[1] Throughout this Report and Recommendation, the Court refers to the transcript of the May 29, 2025, Motions Hearing by the abbreviation "Tr." (Transcript [Docket No. 50]).

[2] While there is no challenge to this Tribal Arrest Warrant, the Court notes that Defendant concedes that he also had a second outstanding warrant for his arrest issued on December 26, 2023, for non-appearance at a Tribal court hearing. (See Def.'s Mot. [Docket No. 35] at 1).

initially cooperative, Defendant became uncooperative, and officers had to use force to get him into the patrol vehicle. (Tr. 35). Defendant testified that upon his arrest, CI Leyba made comments to him when they were about to put him in the car, and as Defendant explained, "[t]hat's what set me off" causing the "dustup" between the two. (Tr. 60–61).

Defendant was then transported to the Red Lake Jail. (Tr. 19). SA Klag testified that when Defendant was being booked into the Red Lake Jail, staff there asked him several booking questions including whether Defendant had any mental heath conditions. (Tr. 19). Defendant responded to that question stating that "I just lose control sometimes." (Tr. 19). At the motion hearing, Defendant testified that this was not the first time he had been arrested; he had been arrested five times prior. (Tr. 57).[3]

On May 15, 2024, two days after his arrest, SA Klag, along with CI Leyba, interviewed Defendant at the Red Lake Jail. (Tr. 20). Before the interview began, Defendant was delivered to the interview room by a Red Lake Jail staff member who informed Defendant that two individuals were there to see him. (Tr. 50). Defendant testified that he assumed that the people there to see him were law enforcement, and thus, he told the staff member that he did not want to speak to anyone. (Tr. 50–51). However, Defendant further testified that the staff member told him that he "had no choice" and brought him to the interview room. (Tr. 52, 54, 64). Defendant was escorted by Red Lake Jail staff to the interview room in handcuffs where SA Klag and CI Leyba were waiting. (Tr. 51, 59). Defendant remained handcuffed during the interview. (Tr. 23).

The interview room was an office at the Red Lake Jail. (Tr. 21). The room contained a whiteboard, a couple of desks, and a circular table in the middle of room. (Tr. 21). The room also had a table along one wall with snacks and a coffee machine. (Tr. 21).

[3] During Defendant's May 15, 2024, interview, Defendant told SA Klag that this was his third time being "locked up." (Gov't's Ex. 3 at 3).

At the start of the interview, SA Klag introduced himself and offered Defendant coffee. (Def.'s Ex. 4 at 2). Defendant accepted the coffee, and then CI Leyba asked Defendant "Are you gonna behave? Okay, if you behave and stuff like that the- things are going to go good here, okay." (Tr. 59; Def.'s Ex. 3, at 3; Def.'s Ex. 4 0:00:35-0:00:55). Defendant testified that he understood this statement to be in reference to the altercation between himself and CI Leyba two days prior when Defendant was arrested. (Tr. 61–62). Defendant then explained to CI Leyba that the reason for their earlier altercation was that "I just got no sleep the other day" referring to the time of Defendant's arrest. (Tr. 61–62; Gov't's Ex. 3 at 3; Def.'s Ex. 4 at 0:00:35-0:00:55).

As Defendant was being handed his coffee, SA Klag explained:

> Well Mason since you're in custody um before we talk to you I have to go through your rights with you. I don't know if you'd been through this before ummm if you kind of understand how this stuff works. I'm just gonna go through each of these here and if there's anything that you don't understand you just let me know and we'll—we'll talk it through ok.

(Def.'s Ex. 3 at 5; Def.'s Ex. 4 at 0:03:00-0:03:13). SA Klag then went on to explain:

> Alright Mason so before we ask you any questions you must understand your rights. You have the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during the questioning. If you cannot afford a lawyer one will be appointed for you before any questioning if you wish. If you decide to answer questions without a lawyer now without a lawyer present, you have the right to stop answering at any time. And this next one I am going to read to you and then I'm going to have you read aloud. Umm . . . it says I have read the statement of my rights and I understand what my rights are. At this time, I'm willing to answer questions without a lawyer present.

(Def.'s Ex. 3 at 6; Def.'s Ex. 4 at 0:03:45-0:04:16). SA Klag then asked Defendant to read the FBI Advice of Rights form. (Gov't's Ex. 1). Defendant then read aloud:

> I have read this statement of my rights and I understand what my rights are at this time I am willing to answer questions without a lawyer present.

(Def.'s Ex. 3 at 6; Def.'s Ex. 4 at 0:04:17-0:04:30). After reading the FBI Advice of Rights form, Defendant then also signed the form. (Gov't's Ex. 1). After signing the Advice of Rights form, the

interview proceeded. The interview lasted approximately an hour and a half. (Tr. 24; see also Def.'s Ex. 4). During the interview, Defendant ultimately made multiple incriminating statements; including a full confession. (See, e.g., Def.'s Ex. 3 at 60–72).

B. Standard of Review

"Miranda prohibits the government from introducing into evidence statements made by the defendant during a custodial interrogation unless the defendant has been previously advised of his Fifth Amendment privilege against self-incrimination and right to an attorney." United States v. Chipps, 410 F.3d 438, 445 (8th Cir. 2005) (cleaned up) (citing Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)). Accordingly, Miranda warnings are required for official interrogations where a person has been "taken into custody or otherwise deprived of his freedom of action in any significant way[.]" Stansbury v. California, 511 U.S. 318, 322, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994) (quoting Miranda, 384 U.S. at 444).

A defendant may waive their rights, "provided the waiver is made voluntarily, knowingly and intelligently." Miranda, 384 U.S. at 444. "If the suspect effectively waives his right to counsel after receiving the Miranda warnings, law enforcement officers are free to question him." Davis v. United States, 512 U.S. 452, 458, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994) (citing North Carolina v. Butler, 441 U.S. 369, 372–76, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979)). "But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation." Id. (citing Edwards v. Arizona, 451 U.S. 477, 484–85, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981)).

After Miranda warnings have been administered to a defendant, the burden is on the prosecution to establish that the accused "'in fact knowingly and voluntarily waived [Miranda] rights' when making the statement." Berghuis v. Thompkins, 560 U.S. 370, 382, 130 S. Ct. 2250,

176 L. Ed. 2d 1098 (2010) (quoting Butler, 441 U.S. at 373). However, the prosecution "does not need to show that a waiver of Miranda rights was express . . . [and an] 'implicit waiver' . . . is sufficient to admit a suspect's statement into evidence." Berghuis, 560 U.S. at 384. A waiver of Miranda rights may be implied if the prosecution establishes that a Miranda warning was given, the accused understood the Miranda rights, and they proceeded to speak with law enforcement. Id. at 385 ("[T]he law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford."). This burden is satisfied where the prosecution can establish waiver by a preponderance of the evidence. Colorado v. Connelly, 479 U.S. 157, 168, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986).

"Although Miranda imposes on the police a rule that is both formalistic and practical when it prevents them from interrogating suspects without first providing them with a Miranda warning, it does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights." Berghuis, 560 U.S. at 385. Courts look to "the totality of the circumstances in determining whether a suspect's waiver [of Miranda rights] is valid." United States v. Gayekpar, 678 F.3d 629, 638 (8th Cir. 2012); see also Moran v. Burbine, 475 U.S. 412, 421 (1986) ("Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived." (internal citations omitted)).

C. Analysis

Defendant seeks an Order from this Court finding his statement made during his booking at the Red Lake Jail on May 13, 2024, and his statement made to law enforcement during his custodial interview on May 15, 2024, to be inadmissible against him. (Def.'s Memo. [Docket No.

55]). As for Defendant's May 13th statements when being booked at the Red Lake Jail, Defendant argues that such statements made in response to a question regarding his mental health fell outside of the booking exception to Miranda. (Id. at 23–24). As for his May 15th statements, Defendant argues that: (1) he properly invoked his right to remain silent when he told jail staff that he did not want to speak to any visitors; (2) his statements made to law enforcement were involuntary; and (3) he was represented by a Red Lake Nation Tribal Court advocate at the time.

1. Defendant's May 13, 2024, Statement Made During Booking at the Red Lake Jail.

As discussed above, after Defendant was arrested on May 13, 2024, he was transported to the Red Lake Jail. While being booked, Defendant was asked several questions including one about whether he had any mental health conditions. (Tr. 19). While there is not a recording of these booking questions, SA Klag testified Defendant responded to that booking question by stating that "I just lose control sometimes." (Tr. 19). Defendant now argues that this statement is inadmissible as the Red Lake Jail's questioning about mental health falls beyond "administrative concerns" under Pennsylvania v. Muniz, 496 U.S. 582, 602, n.14 (1990).

To be subject to suppression under Miranda, a statement made while in custody must be made in response to interrogation. United States v. McGlothen, 556 F.3d 698, 701 (8th Cir. 2009) (citing United States v. Londondio, 420 F.3d 777, 783 (8th Cir. 2005)). It is undisputed that Defendant was in custody at the Red Lake Jail when he was asked if he had any mental health conditions. Accordingly, the threshold issue is whether jail staff engage in interrogation for the purposes of Miranda when asking Defendant if he had any mental health conditions.

The Court begins its analysis by noting that not all statements made while in custody are products of interrogation. See Rhode Island v. Innis, 446 U.S. 291, 299, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). The United States Supreme Court has defined interrogation as "express questioning or its functional equivalent." See Innis, 446 U.S. at 300–01. Routine "booking" questions are not

considered interrogation because they are not designed to elicit incriminating statements or responses. See Muniz, 496 U.S. at 600–02; United States v. Bishop, 66 F.3d 569, 572 (3rd Cir. 1995) (routine booking question about defendant's limp not designed to elicit incriminating responses and not interrogation). Indeed, "[i]t is well-settled that routine biographical data is exempted from Miranda's coverage." United States v. Brown, 101 F.3d 1272, 1274 (8th Cir. 1996) (citing Muniz, 496 U.S. 582, 601); United States v. Horton, 873 F.2d 180, 181 n. 2 (8th Cir. 1989); United States v. McLaughlin, 777 F.2d 388, 391-92 (8th Cir. 1985)). Furthermore, this Court has concluded in the past that "statements in response to questions pertaining to . . . physical and mental health" are part of routine "booking" questions. United States v. Linderman, No. CR 07-359 (MJD/FLN), 2007 U.S. Dist. LEXIS 102815, at *7 (D. Minn. Dec. 10, 2007), report and recommendation adopted, No. 07-359 (MJD/FLN), 2008 WL 199913, 2008 U.S. Dist. LEXIS 4926 (D. Minn. Jan. 22, 2008)

Here the Court finds that the question posed to Defendant regarding any mental health concerns was a routine booking question that was not designed to elicit an incriminating response. Inquiries about physical and mental health are standard booking questions not designed to illicit incriminating responses, but rather, to ensure the safety of both suspects and jail staff. As such, the question posed to defendant was not interrogation, and therefore, it was exempted from Miranda's coverage.

Accordingly, to the extent that Defendant requests an Order from this Court suppressing Defendant's May 13th statement in response to Red Lake Jail staff's question regarding any mental health concerns, the undersigned recommends that Defendant's motion be **DENIED**.

2. Defendant's argument that the May 15, 2024, Statement Should be Suppressed Because He Told Jail Staff He Did Not Wish to Speak to Visitors.

Defendant next argues that his May 15, 2024, statements should be suppressed because he

told Red Lake Jail staff that he did not want to speak to any visitors. (Def.'s Mot. [Docket No. 55] at 4–9). Defendant testified that he told Red Lake Jail Staff in his jail cell that he did not want to speak with the two visitors who came to see him on May 15, 2024. (Tr. 50–51). According to Defendant's testimony, after he told the Red Lake Jail Staff member that he did not want to speak to the visitors, the Staff member told him that he "had no choice" and then brought him to the interview room. (Tr. 52, 54, 64). Defendant further testified that at the time, although he was never informed that the visitors were law enforcement, he believed that it might be police there to interview him. (Tr. 50–51).

SA Klag testified that prior to the Defendant arriving in the room for the interview, neither Red Lake Jail Staff nor the Defendant himself indicate to him that Defendant did not desire to talk to law enforcement. (Tr. 40–41). This testimony by SA Klag is further corroborated by the audio recording of the beginning of Defendant's interview with law enforcement which shows that Defendant never requested that the interview be terminated nor did he indicate that he did not want to talk to law enforcement. (See Def.'s Ex. 4; Tr. 40–41; Def.'s Ex. 4 at 0:00:00-0:04:00). While the testimony from SA Klag and Defendant are not necessarily in conflict, for the sake of deciding Defendant's Motion, the Court will assume that Defendant indicated to the Red Lake Jail Staff while still in his jail cell that he did not want to see any visitors (See Id.;).

Upon its review of the record, the Court finds that the Defendant did not invoke his rights under Miranda by simply telling Red Lake Jail Staff that he did not wish to see any visitors. First, while Defendant may have subjectively had an inclination or a suspicion that "the visitors" there to see him might have been law enforcement, even had he communicated such belief to jail staff, this would not have invoked Defendant's Fifth Amendment right to remain silent because there was no nexus or communication between the Red Lake Jail Staff and SA Kalag and CI Leyba who

were investigating the alleged crime. (Tr. 52, 54, 64). See gen., United States v. O'Connell, 841 F.2d 1408, 1419 (8th Cir. 1988) (Requiring some degree of communication between individual officers is an integral factor in distinguishing between officers functioning as a "search team," and officers acting in their individual capacity who merely happen to be investigating the same subject). After guiding Defendant to the interview room where SA Klag and CI Leyba were waiting, the Red Lake Jail Staff can be heard on the recorded interview simply advising Defendant to take a seat in the interview room. (Def. Ex. 4 at 0:00:05-0:00:51). The jail staff to whom Defendant talked in his cell waited for several moments in the interview room, Defendant never made any objection to talking to law enforcement, and the jail staff member eventually stated: "All right, I'm gonna take off." (Id. at 0:00:45-0:00:51). Indeed, that record indicates that Defendant never made a request, or any indication whatsoever, while in the interview room that he did not desire to talk to law enforcement. See United States v. Johnson, 56 F.3d 947, 955 (8th Cir. 1995) ("To invoke this right and effectively cut off questioning, a suspect must make 'a clear, consistent expression of a desire to remain silent.'").

The Red Lake Jail Staff member was not part of the team investigating the alleged crime—he was instead simply there to escort Defendant from his jail cell to the interview room in a safe manner. As such, Defendant's generic statements to the jail staff member that he did not want to speak to any "visitors" is not a clear invocation of his Fifth Amendment right to remain silent to be imputed to the investigators SA Klag and CI Leyba.[4]

[4] Even if, for the sake of argument, the Court were to assume that Defendant had properly invoked his Fifth Amendment right to remain silent by telling the jail staff that he did not want to speak to any visitors, "[a]n invocation of the right to remain silent does not mean that questioning can never be resumed, . . . nor does it mean that a defendant cannot later waive this right." United States v. Cody, 114 F.3d 772, 775 (8th Cir. 1997) (citing Butler, 441 U.S. at 374–75). However, when he was brought from his jail cell to the room with law enforcement, Defendant "did not clearly and unambiguously invoke his Fifth Amendment right to remain silent because he continued to talk." United States v. Lewis, No. CR 18-194 (ADM/DTS), 2018 U.S. Dist. LEXIS 218988, 2018 WL 6991111, at *3 (D. Minn. Dec. 7, 2018), report and recommendation adopted, No. CR 18-194 ADM/DTS, 2019 U.S. Dist. LEXIS 4491, 2019

Accordingly, insofar, as Defendant argues that his May 15, 2024, statements should be suppressed because he told a Red Lake Jail staff member that he did not want to speak to "any visitors," the undersigned recommends that Defendant's Motion be **DENIED**.

3. Defendant's argument that May 15, 2024, Statement Should be Suppressed Because his Statements to Law Enforcement Were Involuntary.

Defendant next argues that his statements to law enforcement should also be suppressed because his statements were involuntary. (Def.'s Mot. [Docket No. 55] at 9–13). Specifically, Defendant argues that there are several circumstances regarding the interview that would lead to his will being overborn: (1) he was in custody and was restrained in handcuffs during the entirety of the interview; (2) he told a jail staff member that he did not wish to speak with any visitors; (3) Defendant was met by two law enforcement investigators, one of whom was present during Defendant's arrest, and (4) CI Leyba promised a favorable outcome in exchange for testimony. (Id. at 11). For the reasons stated below, the Court finds each of Defendant's arguments unavailing.

As noted above, "[t]o adequately invoke [the right to remain silent] and effectively cut off questioning, a suspect must indicate 'a clear, consistent expression of a desire to remain silent.'" Johnson, 53 F.3d at 955 (quoting United States v. Thompson, 866 F.2d 268, 272 (8th Cir. 1989)). A court considers "the defendant's statements as a whole to determine whether they indicate an unequivocal decision to invoke the right to remain silent." Johnson, 53 F.3d at 955. However, when the government establishes "that a Miranda warning was given and that it was understood

WL 163119 (D. Minn. Jan. 10, 2019) ("Even if the Court deems 'I'm done talking' to be an invocation of Lewis's right to remain silent, the record here establishes that he immediately waived that right when he spontaneously continued talking to the detectives.") (citing United States v. Smith, Criminal No. 13-20263, 2013 U.S. Dist. LEXIS 151899, 2013 WL 5745133, at * 5 (E.D. Mich. Oct. 23, 2013)); see also United States v. Adams, 820 F.3d 317, 323 (8th Cir. 2016) (concluding that a defendant failed to effectively invoke his right to remain silent by stating "[n]ah, I don't want to talk, man," when he then immediately continued speaking with the investigator"). As, such the Court concludes that Defendant's course of conduct once he arrived at the interview room and confirmed his assumption that the "visitors" were law enforcement and engaged in conversation with them without hesitation was inconsistent with a desire to exercise his right to remain silent, and thereby amounted to having waived that right if ever asserted at all to the non-investigator jail staffer.

by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." Berghuis, 560 U.S. at 384. Courts determine voluntariness under the totality of the circumstances, examining both police conduct and the defendant's characteristics to assess whether the defendant's will was overborne. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Here the totality of the record indicates that Defendant's will was not overborn and that Defendant voluntarily waived his Miranda rights.

When Defendant arrived in the interview room, he had been handcuffed while being escorted by Red Lake Jail staff. The interview room was an office at the Red Lake Jail. (Tr. 21). The room contained a whiteboard, a couple of desks, and a circular table in the middle of room. (Tr. 21). The room also had a table along the wall offering snacks and a coffee machine. (Tr. 21).[5] At the start of the interview, SA Klag introduced himself and offered Defendant coffee. (Def.'s Ex. 4 at 2). The Record indicates that while Defendant was handcuffed, he was able to sufficiently move about to drink the coffee given to him. (See Def.'s Ex. 3 at 5).[6] Law enforcement never threatened Defendant or raised their voice, see United States v. Beaulieu, No. 20-cr-235 (ECT/LIB), 2021 U.S. Dist. LEXIS 162617, 2021 WL 3813317, at *5 (D. Minn. July 21, 2021) (concluding that the totality of the circumstances did not indicate that the defendant's will was overborne where the interview was conducted in a conversational tone and the interviewers made

[5] While there is no information on the Record regarding what law enforcement officers were wearing, there is no indication or testimony from either SA Klag or Defendant that Defendant was physically intimidated or otherwise threatened by law enforcement in the room.

[6] In addition, the Government's brief implicitly concedes that the May 15, 2024, interview was a custodial interview as Defendant had been arrested days prior and was currently at the Red Lake Jail. See United States v. Parker, 993 F.3d 595, 603 (8th Cir. 2021) (quoting United States v. Giboney, 863 F.3d 1022, 1028 (8th Cir. 2017)), cert. denied, 211 L. Ed. 2d 386, 142 S. Ct. 619 (2021) (restraint of freedom "to the degree associated with formal arrest" is one factor to consider when determining whether or not an interview is custodial or not). As such, there is no argument that law enforcement could have been exempted from providing Defendant a Miranda warning as the May 15, 2024, interview was a custodial interview. See Miranda, 384 U.S. at 444. As such, the argument that Defendant was restrained simply goes to the totality of the circumstance analysis to determine if Defendant's will was overborn. See Schneckloth, 412 U.S. at 226.

no threats to the defendant), report and recommendation adopted, 2021 U.S. Dist. LEXIS 161703, 2021 WL 3809927 (D. Minn. Aug. 26, 2021); nor is there any evidence that law enforcement stood over Defendant or brandished weapons to elicit a confession. See Bram v. United States, 168 U.S. 532, 542–43 (1897) (A confession is involuntary if it was "extracted by any sort of threats or violence . . ."); see also United States v. Evans, No. 19-cr-294(2) (PJS/LIB), 2020 U.S. Dist. LEXIS 69548, 2020 WL 1930586, at *5 (D. Minn. Mar. 4, 2020), report and recommendation adopted, 2020 U.S. Dist. LEXIS 69268, 2020 WL 1923225 (D. Minn. Apr. 21, 2020).

Defendant attempts to characterize CI Leyba's statement: "Are you gonna behave? Okay, if you behave and stuff like that the- things are going to go good here" as being a coercive statement promising a benefit to Defendant if he answered questions of the investigators. (Def.'s Mot. [Docket No. 55] at 11–12; Tr. 59; Def.'s Ex. 3, at 3). However, Defendant's own testimony contradicts this argument. Defendant testified at the motions hearing that he understood this statement to be in reference to the physical altercation between himself and CI Leyba two days prior when Defendant was arrested. (Tr. 61–62). Furthermore, Defendant explained, in response to CI Leyba, that the reason for the altercation was that "I just got no sleep the other day" referring again to the time of Defendant's arrest. (Tr. 61–62; Gov't's Ex. 3 at 3). This contemporaneous response alone indicates that Defendant understood CI Leyba's statement simply as referring to the circumstances around Defendant's earlier arrest on May 13, 2024.[7]

SA Klag read Defendant his Miranda rights (Def.'s Ex. 3 at 6). SA Klag then asked Defendant to read the FBI Advice of Rights form. (Gov't's Ex. 1). Defendant did so and then read

[7] However, for the sake of argument, even if the Court were to determine that CI Leyba's statement could be interpreted as some kind of leniency promise, Courts may consider such promises in assessing whether police conduct overbore the will of a defendant, but it is only one consideration "and does not render a confession involuntary per se." Simmons v. Bowersox, 235 F.3d 1124, 1133 (8th Cir. 2001). In Simmons, the Eighth Circuit stated that telling a suspect that telling the truth would "go better for him," did not "constitute an implied or express promise of leniency for the purpose of rendering his confession involuntary." Id. (citing Bolder v. Armontrout, 921 F.2d 1359, 1366 (8th Cir. 1990)).

aloud:

> I have read this statement of my rights and I understand what my rights are at this time I am willing to answer questions without a lawyer present.

(Def.'s Ex. 3 at 6). After reading the FBI Advice of Rights form, Defendant also then signed the form. (Gov't's Ex. 1). After signing the Advice of Rights form, the interview proceeded.

In total, the interview took approximately 1.5 hours. (Gov't's Ex. 4). While a lengthy interrogation can be coercive, the Eighth Circuit has upheld interrogations lasting as long as thirteen hours. Williams v. Norris, 576 F.3d 850, 868–69 (8th Cir. 2009). As such, the length of the interview here was not coercive in duration. See, e.g., United States v. Makes Room, 49 F.3d 410, 415 (8th Cir. 1995) (finding that an interrogation lasting over two hours was not coercive in duration); Sumpter v. Nix, 863 F.2d 563, 565 (8th Cir. 1988) (finding that interrogation lasting seven-and-a-half hours was not coercive in duration).

Finally, for the same reasons as discussed above, the fact that Defendant indicated to Red Lake Jail staff that he did not want to talk to "any visitors" before being escorted to the interview room where he was given his Miranda warning does not show that he was "coerced" into making statements to the police. See gen., United States v. Vinton, 631 F.3d 476, 482 (8th Cir. 2011) ("There is no credible evidence that the police coerced [Defendant] into making the statements, or that his decision to speak with them was the product of anything other than a free and unconstrained choice."). Instead, Defendant had multiple opportunities from the time he arrived in the interview room with law enforcement investigators present to terminate the interaction, but he chose not to do so. This absence of any objections by Defendant cannot be attributed to any lack of familiarity with interacting with law enforcement as the record, including Defendant's own testimony, indicates that he had been previously arrested several times. A history of interaction with the criminal justice system supports an inference that an interviewee is familiar

with his constitutional rights and that his statements to the police are voluntary. United States v. Griffith, 533 F.3d 979, 984–85 (8th Cir. 2008).

In sum, the record does not demonstrate that Defendant's will was overborn during his interaction with law enforcement thus rendering his statements to be involuntary. In contrast, the audio of the entirety of the interview, as well as, the written waiver signed by Defendant, shows by a totality of the circumstances that Defendant voluntarily of his own will interacted with law enforcement when answering their questions. As such, the undersigned recommends that insofar as Defendant argues that his statements were involuntary, Defendant's Motion be **DENIED**.

4. Defendant's argument that May 15, 2024, Statement Should be Suppressed Because He had a Tribal Representative Appointed to Him.

Defendant lastly argues that his May 15, 2024, statements should be suppressed because he had been appointed Red Lake Nation Tribal Court advocate at the time. (Def.'s Mot. [Docket No. 55] at 13–21). The Red Lake Nation tribal court provides indigent criminal defendants with representation by lay tribal court advocates. Defendant had appeared in Red Lake Tribal Court on May 14, 2024, on assault charges stemming from the same incident that underlies the charges in the Federal indictment. (See Def.'s Ex. 1 (Red Lake Tribal Criminal Complaint); Tr. 20, 34). Such tribal court advocates are not licensed attorneys, but instead, lay advocates appointed to help indigent defendants solely in the Red Lake Nation's tribal court. (Tr. 26, 31–32).

Defendant argues that that his Sixth Amendment right to counsel was violated when Law enforcement interviewed him on May 15, 2024, without his tribal court advocate present. (Def.'s Mot. [Docket No. 55] at 16–20. There is no dispute that the Federal Indictment, [Docket No. 1], in the present case stems from the same underlying conduct as was charged in the tribal complaint before the Red Lake Tribal Court. What is disputed is whether the appointment of a Red Lake Nation Tribal Court advocate was sufficient for the Sixth Amendment right to counsel to attach to

Defendant's May 15, 2024, custodial interview by Federal law enforcement.

"There is, as a general proposition, no Sixth Amendment right to counsel in Indian Country as to tribal court matters. Such right is guaranteed by the Indian Civil Rights Act ("ICRA") (but only at the expense of the defendant)." United States v. Red Bird, 2001 DSD 15, 146 F. Supp. 2d 993, 997 (D.S.D. 2001), aff'd sub nom., United States v. Bird, 287 F.3d 709 (8th Cir. 2002); see also Bird, 287 F.3d at 713 ("The Bill of Rights and the Fourteenth Amendment . . . do not apply directly to tribes."). A defendant's right to counsel under the ICRA, while somewhat similar to that contained in the Bill of Rights, "is not coextensive with the Sixth Amendment right." United States v. Bryant, 579 U.S. 140, 149 (2016); accord United States v. Drapeau, 827 F.3d 773, 777 (8th Cir. 2016). This Court has previously concluded that the Red Lake Tribal Court appointment of a lay advocate to represent a defendant in tribal court proceedings does not cause the Sixth Amendment right to counsel to attach. United States v. Strong, No. 14-cr-23 (RHK/LIB), 2014 U.S. Dist. LEXIS 169542, at **5-6 (D. Minn. April 7, 2014), report and recommendation adopted, No. 14-cr-23 (RHK/LIB), 2014 U.S. Dist. LEXIS 169541 (D. Minn. April 30, 2014). As such, Defendant had no Sixth Amendment constitutional right to have his Red Lake Nation Tribal Court advocate, as a non-lawyer lay person, present with him during the May 15, 2024, interview by SA Klag.

However, even assuming for the sake of argument that being represented in the tribal court proceedings by a lay advocate was sufficient for Defendant's Sixth Amendment right to counsel in the federal proceedings to attach, the Court concludes that the officers were not barred from initiating contact with Defendant on May 15, 2024, without first notifying Defendant's appointed tribal court lay advocate. "The defendant may waive the [Sixth Amendment counsel] right whether or not he is already represented by counsel; the decision to waive need not itself be

counseled." Montejo v. Louisiana, 556 U.S. 778, 786 (2009) (citing Michigan v. Harvey, 494 U.S. 344, 352–53 (1990)). A showing that a defendant was read his Miranda rights and agreed to waive those rights will typically suffice to show that the waiver was knowing, voluntary, and intelligent, even though the Miranda rights have their basis in the Fifth Amendment. Montejo, 556 U.S. at 786; United States v. May, No. 14-cr-136 (JRT/LIB) (1), 2014 U.S. Dist. LEXIS 168612, at *23 (D. Minn. Oct. 31, 2014), report and recommendation adopted, No. 14-cr-136 (JRT/LIB) (1), 2014 U.S. Dist. LEXIS 166649 (D. Minn., Dec. 1, 2014).

As discussed above, the Court has already determined that Defendant knowingly, voluntarily, and intelligently waived his rights under Miranda and by doing so, he also waived any would-be Sixth Amendment right to presence of counsel.

Accordingly, for all the reasons set forth above, the undersigned recommends that Defendant's Motion to Suppress Statements, [Docket No. 35], be **DENIED**.

II. CONCLUSION

Therefore, based on the foregoing and all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Defendant's Motion Suppress Statements, [Docket No. 35], be **DENIED**.

Dated: August 28, 2025

s/Leo I. Brisbois
Hon. Leo I. Brisbois
U.S. MAGISTRATE JUDGE

N O T I C E

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "A party may file and serve specific written objections to a magistrate judge's proposed findings and recommendation within 14 days after being served with a copy of the

recommended disposition[.]" A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.